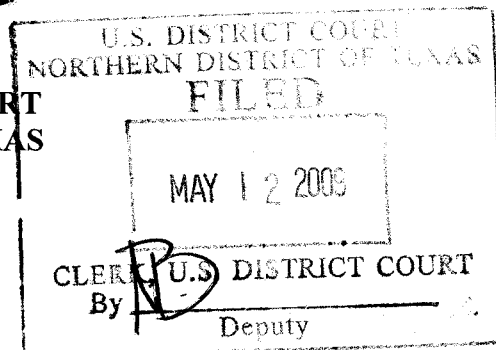


ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**



LILIAN MCLEMORE,

Plaintiff.

VS.

**ETHEX CORPORATION, and CVS
PHARMACY, INC.,**

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO.

31143
8-09CV0885-D

NOTICE OF REMOVAL

COMES NOW ETHEX Corporation ("ETHEX") and respectfully removes this case to the United States District Court for the Northern District of Texas pursuant to 28 U.S.C. §§ 1441 and 1446. ETHEX would respectfully show the Court the following:

I. DOCUMENTS IN SUPPORT OF REMOVAL

1. Pursuant to Local Rule 81.1 and 28 U.S.C. § 1446(a), ETHEX attaches as appendices to this Notice of Removal:

- Tab A: Index of Documents Filed in State Court;
- Tab B: Plaintiff's Original Petition;
- Tab C: Copy of Executed Citation Served on ETHEX Corporation;
- Tab D: Original Answer of Defendant ETHEX Corporation;
- Tab E: Original Answer of Defendant CVS Pharmacy, Inc. to Plaintiff's Original Petition;
- Tab F: Certified Copy of the Docket Sheet in the State Court Action;
- Tab G: A copy of a completed civil cover sheet;
- Tab H: A copy of a completed supplemental civil cover sheet;

Tab I: Notice of Removed Action to be filed in the state court action.

Tab J: A separately signed Certificate of Interested Persons that complies with Local Rule 3.1

In filing this Notice of Removal, ETHEX expressly reserves all other questions other than that of removal, for the purpose of further pleadings.

II. PARTIES

2. Plaintiff LILIAN MCLEMORE ("Plaintiff") is a Texas citizen and a resident of Dallas County, Texas. See Tab B, Plaintiff's Original Petition ("Pet."), ¶ 5.

3. Defendant ETHEX is a foreign corporation, incorporated in the State of Missouri, with its principal office and residence in St. Louis, Missouri.

4. Defendant CVS PHARMACY INC. ("CVS") is a foreign corporation, incorporated in the State of Rhode Island. See Tab B, Pet. ¶ 6b. CVS has its principal office and residence in Rhode Island.

III. PROCEDURAL BACKGROUND OF STATE COURT ACTION

5. On or about April 7, 2009, Plaintiff filed a civil action against Defendants in the District Court of Jefferson County, Texas, styled Cause No. 09-04024: *Lilian McLemore v. ETHEX Corporation, CVS Pharmacy Inc.* (the "State Court Action").

6. The State Court Action is currently pending in the District Court of Dallas County, Texas, 116TH Judicial District.

7. Plaintiff served its Requests for Disclosure, First Request for Admissions, First Set of Interrogatories, and First Request for Production with its Original Petition directed towards both Defendants (the "discovery requests").

8. ETHEX was served with "Plaintiff's Original Petition and Request for Disclosure" (the "Complaint") on April 13, 2009.

9. On May 1, 2009 ETHEX filed the Original Answer of Defendant ETHEX Corporation in the State Court Action (“ETHEX’s Answer”).

10. On May 4, 2009 CVS filed the Original Answer of Defendant CVS Pharmacy, Inc. to Plaintiff’s Original Petition in the State Court Action (“CVS’ Answer”).

11. Other than Plaintiffs’ Original Petition, ETHEX’s Answer, the discovery requests, and CVS’ Answer, no proceedings have been had in this matter.

IV. DEFENDANTS HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

12. ETHEX removes this action to the United States District Court for the Northern District of Texas pursuant to the provisions of 28 U.S.C. § 1441, on the ground that this Court has original jurisdiction pursuant to the provisions of 28 U.S.C. § 1332(a).

13. This Notice of Removal is timely filed within 30 days of ETHEX’s receipt of Plaintiffs’ Original Petition, pursuant to 28 U.S.C. § 1446(b).

14. The Notice of Removed Action required by 28 U.S.C. § 1446(d), addressed to the adverse party and to the Clerk of the District Court of Dallas County, Texas, 116TH Judicial District in the form attached hereto at Tab I, will be filed in the State Court Action, and will be forwarded to the attorneys for Plaintiff upon the filing of this Notice of Removal.

II. THIS COURT HAS SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1332

A. Removal Legal Standards

15. “[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a) (2009). A federal district court has original “diversity”

jurisdiction where the suit is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of costs and interest. 28 U.S.C. § 1332(a) (2009).

B. Complete Diversity Exists Between The Parties

16. Plaintiff and Defendants are citizens of different states. Plaintiff is a citizen of Texas. *See* Tab B, Pet. ¶ 5. Under § 1332, a corporation is a citizen of any State by which it has been incorporated. *See* 28 U.S.C. § 1332(c)(1)(2009). ETHEX was incorporated in Missouri, has its principal place of business in Missouri, and, under § 1332, is a Missouri citizen. *See id.* CVS was incorporated in Rhode Island, has its principal place of business in Rhode Island, and is a Rhode Island citizen under § 1332. *See id.* As such, the complete diversity requirement is met as the citizenships of both Plaintiffs are diverse from the citizenships of both Defendants.

17. Venue lies in this Court because Plaintiffs' action is pending in this district and division. *See* 28 U.S.C. § 1441(a)(2009).

C. The amount in controversy exceeds \$75,000 exclusive of interest and costs.

18. Diversity jurisdiction under § 1332 only exists where the amount in controversy exceeds \$75,000. *White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003). The amount in controversy should be determined at the time of filing. *Id.* When a plaintiff does not allege a specific amount of damages, the defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000. *Barr v. Frannet, LLC*, 3:07-cv-1222-M, 2008 WL 59295 at *1 (N.D. Tex. Jan. 3, 2008)(internal citations omitted). To make this determination, the Court must review the petition to see if it is facially apparent that the claim exceeds \$75,000. *See White*, 319 F.3d at 675; *Barr*, 2008 WL 59295 at *1 (internal citations omitted). If it is not facially apparent that the amount in controversy exceeds \$75,000, the removing party can set forth facts that support a finding of the requisite amount in controversy. *Barr*, 2008 WL 59295

at *1 (internal citations omitted). If a Defendant meets this burden, Plaintiff can only defeat removal if he can prove that, “to a legal certainty,” the claim is actually for less than \$75,000. *Id.* (internal citations omitted).

19. Plaintiff claims that she ingested an oversized morphine sulfate tablet that caused her to “lose her balance and fall to an severely strike the floor” which resulted in injuries to “both of her arms and upper body as a result of the impact of the fall.” *See* Tab B, Pet. ¶ 12. Plaintiff goes on to allege that she was taken to the hospital for medical treatment, “diagnosed as having and received treatment for a broken wrists [sic] and broken arms, and has thereafter had *three* surgeries to repair these injuries.” *See* Tab B, Pet. ¶ 13 (emphasis added). These alleged injuries “caused Plaintiff to incur expenses for medical treatment and *proper* medication and for transportation and to suffer sever excruciating pain and suffering.” *See* Tab B, Pet. ¶ 14 (emphasis original). As a result of these injuries, Plaintiff has asserted claims of “negligence” and “products liability” and seeks multiple forms of damages including:

- i. past medical expenses;
- ii. future medical expenses;
- iii. past pain and suffering;
- iv. future pain and suffering;
- v. past mental anguish;
- vi. future mental anguish;
- vii. past mental anguish [sic];
- viii. future mental anguish [sic];
- ix. past physical impairment;
- x. future physical impairment;

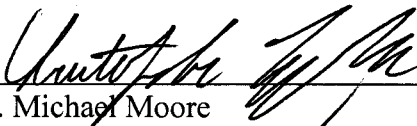
- xi. past loss of earnings;
- xii. future loss of earnings;
- xiii. loss of past household services;
- xiv. loss of future household services; and
- xv. disfigurement.

See Tab B, Pet. ¶ 22. Plaintiff seeks these damages jointly and severally against ETHEX and CVS and seeks “other and further relief to which she may be entitled.” See Tab B, Pet. p. 5.

20. Plaintiff does not specify an amount of damages sought. It is apparent, however, from the face of the complaint that the amount in controversy likely exceeds \$75,000. Plaintiff seeks damages for injuries that she alleges are “severe” and that have resulted in her having three (3) surgeries. See Tab B, Pet. ¶¶ 12-13. Plaintiff seeks at least thirteen (13) forms of damages, several of which include damages for future suffering, impairment, and loss of earnings. Plaintiff’s factual allegations, the causes of action she has asserted, her multiple claim for damages, and her claim for other and further relief to which she may be entitled facially show that the amount in controversy exceeds \$75,000. As such, removal is proper. See *e.g. White*, 319 F.3d at 676; *Barr*, 2008 WL 59295 at *2.

WHEREFORE, PREMISES CONSIDERED, Defendant ETHEX Corporation hereby remove this Action from the District Court of Dallas County, Texas, 116TH Judicial District to the United States District Court for the Northern District of Texas.

Respectfully submitted,


C. Michael Moore
State Bar No. 14323600 ✓
Margaret "Peg" Donahue Hall
State Bar No. 05968450 ✓
Christopher W. Reynolds ✓
State Bar No. 24051247 ✓
SONNENSCHN NATH & ROSENTHAL, LLP
2000 McKinney Ave., Suite 1900
Dallas, TX 75201
(214)-259-0900 - *telephone*
(214)-259-0910 - *facsimile*

**ATTORNEYS FOR DEFENDANT ETHEX
CORPORATION**

CERTIFICATE OF SERVICE

I certify that on 5/12/09, the foregoing document was served via certified mail, return receipt requested upon the following:

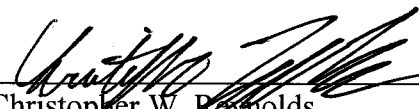
Donald Scott Mackenzie
The Law Office of Scott Mackenzie
9601 White rock Trail, Suite 205
Dallas, Texas 75238
(214)-245-4625 - *telephone*
(214)-269-1439 - *facsimile*

Paul H. Cross
Paul H. Cross Attorney at Law
9601 White Rock Trail, Suite 205
Dallas, Texas 75238
(214)-926-5734 - *telephone*
(214)-269-1439 - *facsimile*

Counsel for Plaintiff Lilian McLemore
John R. Robinson
Forman Perry Watkins & Tardy LLP
Bryan Tower
2001 Bryan Street, Suite 1300
Dallas, Texas 75201
(214)-665-2600 - *telephone*
(214)-905-3976 - *facsimile*

Counsel for Plaintiff Lilian McLemore

Counsel for Defendant CVS Pharmacy, Inc.


Christopher W. Reynolds

A

CAUSE NO. DC-09-04024

LILIAN MCLEMORE,

Plaintiff.

VS.

**ETHEX CORPORATION, and CVS
PHARMACY, INC.,**

Defendants.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

116TH JUDICIAL DISTRICT

INDEX OF DOCUMENTS FILED IN STATE COURT

<u>Document</u>	<u>Date Filed</u>	<u>Tab</u>
Plaintiff's Original Petition	April 7, 2009	B
Copy of Executed Citation Served on ETHEX Corporation	April 16, 2009	C
Original Answer of Defendant ETHEX Corporation	May 1, 2009	D
Original Answer of Defendant CVS Pharmacy, Inc. to Plaintiff's Original Petition	May 4, 2009	E

[Handwritten signature]

04-805 cert. mail
Gt - a#1

CAUSE NO. 09-04024

FILED
2009 APR -7 PM 2:03
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO. TEXAS
NOTED FOR DEPUTY

LILIAN MCLEMORE,

Plaintiff

VS.

ETHEX CORPORATION, CVS
PHARMACY, INC.,

Defendants.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

F-116th

___ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

Lillian McLemore ("Plaintiff") complains of ETHEX Corporation and CVS Pharmacy, Inc. (collectively "Defendants"), and respectfully shows:

ORIGINAL PETITION

Discovery Level

1. Discovery is to be conducted under Level 3.

Introduction

2. Plaintiff sues to recover for injuries she sustained as a result of Defendants providing her with a prescription drug which was approximately twice the correct dosage.
3. Plaintiff does not assert any claims or causes of action under federal law, and does not seek any relief or remedies under federal law.
4. This case does not include or implicate malpractice by any health care provider. Plaintiff does assert any claims or causes of action for malpractice, and does not seek any relief or remedies for malpractice.

Parties and Service of Process

5. Plaintiff is a natural person who is a Texas citizen and Dallas County, Texas resident.

6. Defendants are:

- a. **ETHEX Corporation** ("ETHEX"), a sister state corporation which, upon information and belief, regularly conducts business in Texas, is thus subject to personal jurisdiction in Texas because it regularly conducts business in Texas, has its principal place of business in Missouri, but does not have a registered agent or place of business in Texas, and thus may be served with process through the Secretary of Texas with instructions to forward citation and a copy of this petition via registered mail to ETHEX's home office, which is 2503 South Hanley Road, Saint Louis, Missouri 63144; and
- b. **CVS Pharmacy, Inc.** ("CVS"), a Rhode Island corporation which may be served with process through its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Dallas County, Texas 75201.

*1 att, SOS
cert. mail*

1 atty

Operative Facts

7. ETHEX manufactures morphine sulphate tablets and other types of medicine and pharmaceutical products. ETHEX distributes the same to CVS and other pharmacies and other medical providers in Texas and elsewhere.

8. A licensed physician wrote a prescription for Plaintiff for morphine sulphate as medication. Morphine is a very strong pain killing medication which can and has had serious adverse health effects when ingested in a large or excessive amount.

9. Plaintiff took that prescription to be filled to the CVS retail store located at 1413 Oates Drive, Mesquite, Dallas County, Texas 75150. The medication prepared for and provided to Plaintiff actually consisted of tablets which contained approximately twice the amount of the medication which should have been contained in each tablet. Upon information and belief, these tablets were manufactured and distributed by ETHEX.

10. Plaintiff went to the CVS store where she had left the prescription and paid for and received the medication in tablets which contained approximately twice the amount of morphine sulphate which should have been contained in each tablet.

11. Pursuant to the instructions on the bottle, Plaintiff ingested the prescribed dosage for pain on the date she received the tablets from the CVS store. Plaintiff was at her residence in Garland, Dallas County, Texas when she ingested these tablets.

12. The taking of these tablets caused Plaintiff to black out and lose consciousness, which in turn caused her to lose her balance and fall to and severely strike the floor in her residence. Plaintiff severely injured both of her arms and upper body as a result of the impact of that fall. Plaintiff eventually was discovered on the floor, and received emergency medical care.

13. Emergency medical technicians then arrived at Plaintiff's house, provided preliminary treatment and took her to a hospital for medical treatment and care. She was diagnosed as having and received treatment for a broken wrists and broken arms, and has thereafter had three surgeries to repair these injuries.

14. The injuries described and alleged above caused Plaintiff to incur expenses for medical treatment and *proper* medication and for transportation and to suffer severe, excruciating pain and suffering.

Negligence

15. Defendants had a duty to manufacture and distribute morphine sulphate tablets in the size and with the amount of morphine sulphate which was prescribed by the physician who wrote the subject prescription for Plaintiff and in a size and with an amount of morphine sulphate which would not be excessive.

16. Defendants knew or should have known that distributing morphine sulphate tablets to consumers such as Plaintiff with twice the amount of morphine sulphate as prescribed or which is appropriate would cause or be likely to cause severe health risk and physical injury to persons who ingested those tablets.

17. Defendants breached their duty of care by selling and providing morphine sulphate tablets to Plaintiff which contained approximately twice the amount of morphine sulphate which should have been contained in each tablet.

18. Such wrongful conduct of Defendants was the actual, producing and proximate cause of actual damages to Plaintiff.

Product Liability

19. Defendants were (and are) under a duty to warn consumers of danger of products which they may or do place into the stream of commerce.

20. Defendants knew or should have known that distributing morphine sulphate tablets to consumers such as Plaintiff with twice the amount of morphine sulphate as prescribed or which is appropriate would cause or be likely to cause sever health risk and physical injury to persons who ingested those tablets.

21. Defendants failed to warn Plaintiff that the tablets provided to Plaintiff contained an amount of morphine sulphate was much larger than the amount usually provided to consumers in tablets of the kind prescribed, or that tablets of such size and containing that amount of morphine sulphate.

Damages

22. The wrongful conduct alleged above was the actual, producing and proximate cause of damages sustained by Plaintiff which sustain the minimum jurisdictional limit of this Court. These damages include, without limitation,

- a. past medical expenses;
- b. future medical expenses;
- c. past pain and suffering;
- d. future pain and suffering;
- e. past mental anguish;
- f. future mental anguish;

- g. past mental anguish;
- h. future mental anguish;
- i. past physical impairment;
- j. future physical impairment;
- k. past loss of earnings;
- l. future loss of earnings;
- m. loss of past household services;
- n. loss of future household services; and
- o. disfigurement.

Conditions Precedent

23. Plaintiff has satisfied all conditions precedent for mainlining and recovering upon her causes of action.

PLAINTIFF'S FIRST DISCOVERY REQUESTS

Attached hereto and served with citation and a copy of this petition and incorporated by reference are the first request for disclosure, first requests for admissions, first sets of interrogatories and first requests for production to each of Defendants.

Prayer

Plaintiff respectfully requests that she be granted and have and recover judgment of, from and against Defendants, jointly and severally, for:

- 1. damages in an amount to be proven;
- 2. prejudgment interest;
- 3. court costs;
- 4. post-judgment interest on the entire amount of the judgment; and
- 5. other and further relief to which she may be entitled.

Respectfully submitted,



Donald Scott Mackenzie
Texas Bar No. 24030088
9601 White Rock Trail, Suite 205
Dallas, Texas 75238
214/245-4625 (fax) 214/269-1439
dallaslaw@gmail.com

Paul H. Cross

Paul H. Cross
Texas Bar No. 005131500
9601 White Rock Trail, Suite 205
Dallas, Texas 75238
(214) 926-5734 – Telephone
(214) 269-1439 – Facsimile

COUNSEL FOR PLAINTIFF

/c

FORM NO. 353-4—CITATION
THE STATE OF TEXAS

To: **ETHEX CORPORATION**
BY SERVING THE SECRETARY OF STATE
OFFICE OF THE SECRETARY OF STATE
CITATIONS UNIT - P.O. BOX 12079
AUSTIN, TX, 78711

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Your answer should be addressed to the clerk of the **116th District Court**
at 600 Commerce Street, Dallas, Texas 75202.

Said **PLAINTIFF** being **LILIAN MCLEMORE**

Filed in said Court ON THIS THE 7TH DAY OF APRIL, 2009 against
ETHEX CORPORATION

For suit, said suit being numbered **DC-09-04024-1** the nature of which demand is as follows:
Suit On **OTHER PERSONAL INJURY** etc.

as shown on said petition, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

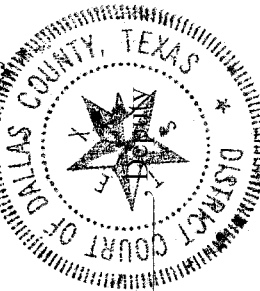
WITNESS: GARY FITZSIMMONS, Clerk of the District Courts of Dallas, County Texas.

Given under my name and the Seal of said Court at office on **this the 9th day of April, 2009**

ATTEST: GARY FITZSIMMONS

Clerk of the District Courts of Dallas, County, Texas

By *Evette Lamb*
EVETTE LAMB



CERTMAIL (SOS)

CITATION

No.: **DC-09-04024-1**

LILIAN MCLEMORE

VS.

ETHEX CORPORATION, ET AL

ISSUED

ON THIS THE 9TH DAY OF APRIL,
2009

GARY FITZSIMMONS
Clerk District Courts,
Dallas County, Texas

By **EVETTE LAMB**, Deputy

Attorney for : Plaintiff

PAUL H. CROSS

9601 WHITE ROCK TRAIL, STE 205

DALLAS, TX 75238

214-926-5734

DALLAS COUNTY CONSTABLE

FEES NOT PAID



OFFICER'S RETURN
FOR INDIVIDUALS

Received this Citation the _____ day of _____, 20____ at _____ o'clock. Executed at _____, within the County _____, State of _____, on the _____ day of _____, at _____ o'clock, by _____ delivering to the within named _____ each in person, a copy of this Citation together with the accompanying copy of Plaintiff's original petition, having first indorsed on same the date of delivery.

-----000000-----

OFFICER'S RETURN
FOR CORPORATIONS

Received this Citation the _____ day of _____, 20____ at _____ o'clock _____ M. Executed at _____, within the County _____, State of _____, on the _____ day of _____, at _____ o'clock _____ M. by summoning the within named Corporation, _____ by CERTMAIL to _____ Registered Agent - in person, of the said _____ a true copy of this citation together with the accompanying copy of Plaintiff's original petition, ATTACHED THERE TO WAS MAILED BY US
CERTIFIED MAIL RETURN RECEIPT REQUESTED.

-----000000-----

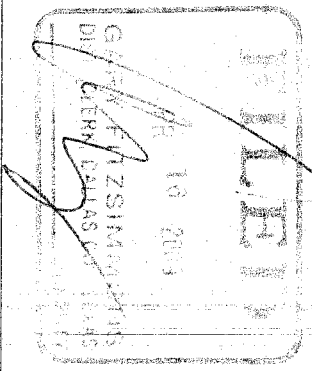
The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness by my hand.

For Serving Citation \$ _____
For Mileage \$ _____
For Notary \$ _____
Total Fees \$ _____

County of _____
Sheriff _____
State of _____
By _____

GARVEY SIMMONS
DISTRICT CLERK
600 COMMERCE STREET
DALLAS, TEXAS 75202-4606

It be verified if served outside the State of Texas)
_____ Date of _____
County of _____
Signed and sworn to me by the said _____ before me this _____ day of _____, 20____, to certify which witness my hand and seal of office.



Seal

State & County of _____

2. Article Number



7160 3901 9846 2074 3282

3. Service Type: **CERTIFIED MAIL**4. Restricted Delivery? (Extra Fee) ☒ Yes

1. Article Addressed to:

ETREX CORPORATION BY SERVING THE
 SECRETARY OF STATE OFFICE OF THE
 SECRETARY OF STATE
 CITATIONS UNIT- P.O. BOX 12079
 AUSTIN, TX 78711

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

☐ Agent☐ Addressee**X**D. Is delivery address different from item 1?
If YES, enter delivery address below:☐ Yes☐ No

RECEIVED

APR 13 2009

PS Form 3811, January 2005
DC09-4024-1

4-9-09

EL 0034516

Domestic Return Receipt

US Postal Service

Certified
Mail
ReceiptDomestic Mail Only
No Insurance
Coverage Provided

Postage

\$

Certified Fee

Return Receipt Fee
(Endorsement Required)Restricted Delivery Fee
(Endorsement Required)

Total Postage & Fees

\$

Postmark
Here

Sent To:

ETREX CORPORATION BY SERVING THE
 SECRETARY OF STATE OFFICE OF THE
 SECRETARY OF STATE
 CITATIONS UNIT- P.O. BOX 12079
 AUSTIN, TX 78711

PS Form 3800, January 2005

US Postal Service

Certified Mail Receipt

DC09-4024-1

4-9-09

EL 0034516

7160 3901 9846 2074 3282

1

CAUSE NO. DC-09-04024

LILIAN MCLEMORE,

Plaintiff.

VS.

ETHEX CORPORATION, and CVS
PHARMACY, INC.,

Defendants.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

116TH JUDICIAL DISTRICT

09 MAY -1 PM 12:03
FILED
GARY FITZSIMMONS
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

ORIGINAL ANSWER OF DEFENDANT ETHEX CORPORATION

TO THE HONORABLE COURT:

COMES NOW Defendant ETHEX Corporation ("ETHEX") in the above entitled and numbered cause and files its Original Answer to Plaintiffs' Original Petition. ETHEX respectfully states as follows:

I.

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, ETHEX generally denies each and every, all and singular, allegations set forth in Plaintiffs' Original Petition and demands strict proof thereof.

PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant ETHEX Corporation respectfully prays that the Court renders judgment that Plaintiffs take nothing by this suit and that ETHEX be awarded its costs and any other relief to which it is entitled.

Respectfully submitted,

Margaret Hall

C. Michael Moore
State Bar No. 14323600
Margaret "Peg" Donahue Hall
State Bar No. 05968450
Christopher W. Reynolds
State Bar No. 24051247
SONNENSEHEIN NATH & ROSENTHAL, LLP
2000 McKinney Ave., Suite 1900
Dallas, TX 75201
(214)-259-0900 - *telephone*
(214)-259-0910 - *facsimile*

**ATTORNEYS FOR DEFENDANT ETHEX
CORPORATION**

CERTIFICATE OF SERVICE

The undersigned certifies that on 5/11/09 a true and correct copy of the

foregoing document was served via certified mail, return receipt requested upon the following:

Donald Scott Mackenzie
9601 White Rock Trail, Suite 205
Dallas, Texas 75238
(214)-245-4625 - *telephone*
(214)-269-1439 - *facsimile*

Paul H. Cross
9601 White Rock Trial, Suite 205
Dallas, Texas 75238
(214)-926-5734 - *telephone*
(214)-269-1439 - *facsimile*

Christopher W. Reynolds

Christopher W. Reynolds

[Handwritten mark: a diagonal line with the letter 'E' written below it]

09 May 4 A10:05
Gary Fitzsimmons
District Clerk
Dallas District

CAUSE NO. 09-04024-F

LILIAN MCLEMORE,

Plaintiff,

V.

ETHEX CORPORATION, CVS
PHARMACY, INC.,*Defendants.*§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

116TH JUDICIAL DISTRICT**ANSWER OF DEFENDANT CVS PHARMACY, INC.
TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, CVS PHARMACY, INC., hereinafter referred to as "Defendant," and would respectfully show the Court the following:

1. Defendant asserts a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and requests that Plaintiff be required to prove the charges and allegations contained in her petition by a preponderance of the evidence.

PRAYER

WHEREFORE, PREMISES CONSIDERED, this Defendant prays that Plaintiff take nothing, that this Defendant be dismissed, and that this Defendant recover its costs of court. This Defendant prays for such other and further relief, whether general or special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

**FORMAN PERRY WATKINS
KRUTZ & TARDY LLP**

By: 

John R. Robinson
State Bar No. 17097500
Attorney in Charge
Matthew E. Liebnick
State Bar No. 24013040
2001 Bryan St., Suite 1300
Dallas, Texas 75201
Telephone: (214) 402-2924
Facsimile: (214) 905-3976

**ATTORNEYS FOR DEFENDANT
CVS PHARMACY, INC.**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been sent to Plaintiff's counsel in accordance with Rule 21 and 21a on May 4, 2009.


John R. Robinson

F

CASE SUMMARY **CASE No. DC-09-04024**

LILIAN MCLEMORE
 vs.
ETHEX CORPORATION CVS PHARMACY INC, et
al

§
§
§
§

Location: **116th District Court**
 Judicial Officer: **PRIDDY, BRUCE**
 Filed on: **04/07/2009**

CASE INFORMATION

Case Type: **OTHER PERSONAL INJURY**

PARTY INFORMATION

PLAINTIFF	MCLEMORE, LILIAN	<i>Lead Attorneys</i> CROSS, PAUL 214-926-5734 HARTMAN <i>Retained</i>
DEFENDANT	CVS PHARMACY INC <i>BY SERVING ITS REGISTERED AGENT</i> CT CORPORATION SYSTEM 350 NORTH ST PAUL STREET DALLAS, TX 75201	ROBINSON, JOHN R 214-905-2924 <i>Retained</i>
	ETHEX CORPORATION <i>BY SERVING ITS HOME OFFICE</i> 2503 SOUTH HANLEY ROAD SAINT LOUIS, MO 63144	HALL, MARGARET 214-259-0900 DONAHUE <i>Retained</i>
	ETHEX CORPORATION CVS PHARMACY INC	

DATE	EVENTS & ORDERS OF THE COURT	INDEX
04/07/2009	ORIGINAL PETITION (OCA)	
04/07/2009	ISSUE CITATION	
04/07/2009	ISSUE CITATION COMM OF INS OR SOS	
04/08/2009	CITATION CVS PHARMACY INC issued ATTY	
04/09/2009	CITATION SOS/COI/COH/HAG ETHEX CORPORATION issued CK#4516, 7160 3901 9846 2074 3282	
04/13/2009	CITATION SOS/COI/COH/HAG ETHEX CORPORATION served CK#4516, 7160 3901 9846 2074 3282	
05/01/2009	ORIGINAL ANSWER - GENERAL DENIAL Party: DEFENDANT ETHEX CORPORATION ETHEX CORPORATION	
05/04/2009	ORIGINAL ANSWER - GENERAL DENIAL Party: DEFENDANT CVS PHARMACY INC	

DATE	FINANCIAL INFORMATION
------	-----------------------

CASE SUMMARY
CASE No. DC-09-04024

DEFENDANT CVS PHARMACY INC

Total Charges	2.00
Total Payments and Credits	0.00
Balance Due as of 5/7/2009	2.00

PLAINTIFF MCLEMORE, LILIAN

Total Charges	302.00
Total Payments and Credits	302.00
Balance Due as of 5/7/2009	0.00

/G

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Lilian McLemore

(b) County of Residence of First Listed Plaintiff Dallas County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Donal Scott Mackenzie; 9601 White Rock Trail, Suite 205; Dallas, Texas 75238; (214)-269-1439

DEFENDANTS

ETHEX Corporation
CVS Pharmacy, Inc.

County of Residence of First Listed Defendant St. Louis County, MO
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Sonnenschein Nath & Rosenthal, LLP; 2000 McKinney Ave., Suite 1900; Dallas, Texas 75201; (214)-259-0900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROFESSIONAL FEES <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
--	--	---	--	--	--

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332; 28 U.S.C. 1441

Brief description of cause:

product liability - pharmaceutical

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

H

**United States District Court
Northern District of Texas**

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

<u>Court</u>	<u>Case Number</u>
116 TH Judicial District Court of Dallas County Texas	DC-09-04024

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

<u>Party and Party Type</u>	<u>Attorney(s)</u>
Liliam McLemore - Plaintiff	Donald Scott McKenzie Texas Bar No. 24030088 9601 White Rock Trail Suite 205 Dallas, Texas 75238 (214)-269-1439
	Paul H. Cross Texas Bar No. 05131500 9601 White Rock Trail Suite 205 Dallas, Texas 75238 (214)-926-5734

Supplemental Civil Cover Sheet
Page 2

ETHEX Corporation - Defendant

C. Michael Moore
State Bar No. 14323600
Sonnenschein Nath & Rosenthal, LLP
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214)-259-0900

Margaret "Peg" Donahue Hall
State Bar No. 05968450
Sonnenschein Nath & Rosenthal, LLP
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214)-259-0900

Christopher W. Reynolds
State Bar No. 24051247
Sonnenschein Nath & Rosenthal, LLP
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214)-259-0900

CVS Pharmacy Inc. - Defendant

John R. Robinson
State Bar No. 17097500
Forman Perry Watkins Krutz Tardy, LLP
2001 Bryan St., Suite 1300
Dallas, Texas 75201
(214)-402-2924

Matthew E. Liebnick
State Bar No. 24013040
Forman Perry Watkins Krutz Tardy, LLP
2001 Bryan St., Suite 1300
Dallas, Texas 75201
(214)-402-2924

3. Jury Demand:

Was a Jury Demand made in State Court?

☐ Yes ☒ No

If "Yes," by which party and on what date?

Party

Date

Supplemental Civil Cover Sheet
Page 3

4. Answer:

Was an Answer made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

ETHEX Corporation
Party

May 1, 2009
Date

CVS Pharmacy Inc.
Party

May 4, 2009
Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

None

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

None

7. Claims of the Parties:

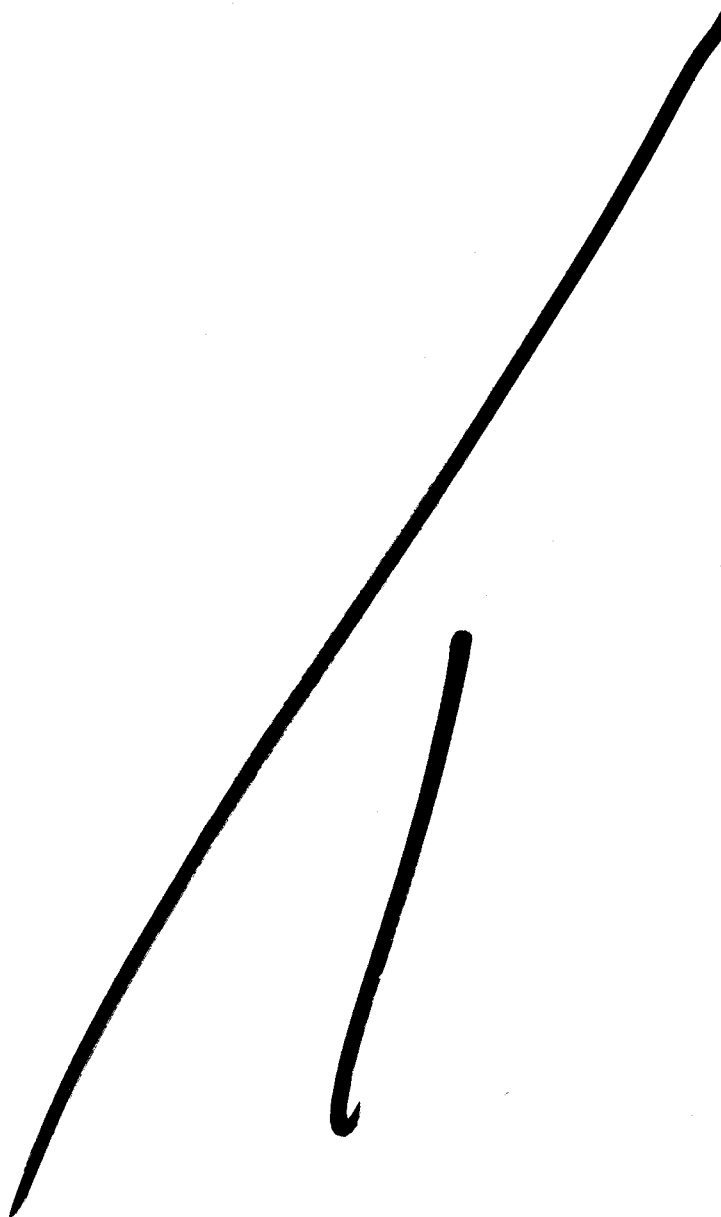
The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Claim(s)

Plaintiffs

Negligence
Product Liability



CAUSE NO. DC-09-04024

LILIAN MCLEMORE,

Plaintiff.

VS.

**ETHEX CORPORATION, and CVS
PHARMACY, INC.,**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT


DALLAS COUNTY, TEXAS

116TH JUDICIAL DISTRICT

NOTICE OF REMOVED ACTION

PLEASE TAKE NOTICE that on May 12, 2009, Defendant ETHEX Corporation, by counsel, removed this action by filing a Notice of Removal in the United States District Court for the Northern District of Texas, Dallas Division together with a complete copy of all process, exhibits, pleadings, and orders served upon Defendant in this action as of the date of the filing of the removal. A complete, true and correct copy of such Notice of Removal is attached hereto as Exhibit A.

Respectfully submitted,


C. Michael Moore
State Bar No. 14323600
Margaret "Peg" Donahue Hall
State Bar No. 05968450
Christopher W. Reynolds
State Bar No. 24051247
SONNENSCHN NATH & ROSENTHAL, LLP
2000 McKinney Ave., Suite 1900
Dallas, TX 75201
(214)-259-0900 - telephone
(214)-259-0910 - facsimile

**ATTORNEYS FOR DEFENDANT ETHEX
CORPORATION**

CERTIFICATE OF SERVICE

I certify that on 5/12/09, the foregoing document was served via certified mail, return receipt requested upon the following:

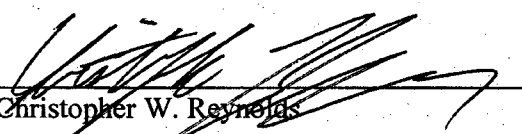
Donald Scott Mackenzie
The Law Office of Scott Mackenzie
9601 White rock Trail, Suite 205
Dallas, Texas 75238
(214)-245-4625 - telephone
(214)-269-1439 - facsimile

Paul H. Cross
Paul H. Cross Attorney at Law
9601 White Rock Trail, Suite 205
Dallas, Texas 75238
(214)-926-5734 - telephone
(214)-269-1439 - facsimile

Counsel for Plaintiff Lilian McLemore
John R. Robinson
Forman Perry Watkins & Tardy LLP
Bryan Tower
2001 Bryan Street, Suite 1300
Dallas, Texas 75201
(214)-665-2600 - telephone
(214)-905-3976 - facsimile

Counsel for Plaintiff Lilian McLemore

Counsel for Defendant CVS Pharmacy, Inc.


Christopher W. Reynolds

15

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

LILIAN MCLEMORE,

Plaintiff.

VS.

**ETHEX CORPORATION, and CVS
PHARMACY, INC.,**

Defendants.

§
§
§
§
§
§
§
§
§
§

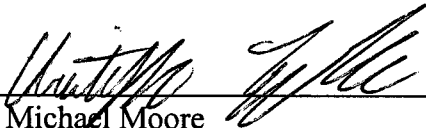
CIVIL ACTION NO. _____

ETHEX CORPORATION'S CERTIFICATE OF INTERESTED PERSONS

TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION:

COMES NOW ETHEX Corporation ("ETHEX") and files its Certificate of Interested
Persons pursuant to Rule 81.1 of the Local Rules of the Northern District of Texas. ETHEX
states that, Lilian McLemore, ETHEX Corporation, and CVS Pharmacy, Inc. are financially
interested in the outcome of this case.

Respectfully submitted,


C. Michael Moore
State Bar No. 14323600
Margaret "Peg" Donahue Hall
State Bar No. 05968450
Christopher W. Reynolds
State Bar No. 24051247
SONNENSCHN NATH & ROSENTHAL, LLP
2000 McKinney Ave., Suite 1900
Dallas, TX 75201
(214)-259-0900 - *telephone*
(214)-259-0910 - *facsimile*

**ATTORNEYS FOR DEFENDANT ETHEX
CORPORATION**

CERTIFICATE OF SERVICE

I certify that on May 12, 2009, the foregoing document was served via certified mail, return receipt requested upon the following:

Donald Scott Mackenzie
The Law Office of Scott Mackenzie
9601 White rock Trail, Suite 205
Dallas, Texas 75238
(214)-245-4625 - *telephone*
(214)-269-1439 - *facsimile*

Paul H. Cross
Paul H. Cross Attorney at Law
9601 White Rock Trail, Suite 205
Dallas, Texas 75238
(214)-926-5734 - *telephone*
(214)-269-1439 - *facsimile*

Counsel for Plaintiff Lilian McLemore

Counsel for Plaintiff Lilian McLemore

John R. Robinson
Forman Perry Watkins & Tardy LLP
Bryan Tower
2001 Bryan Street, Suite 1300
Dallas, Texas 75201
(214)-665-2600 - *telephone*
(214)-905-3976 - *facsimile*

Counsel for Defendant CVS Pharmacy, Inc.


Christopher W. Reynolds

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Lilian McLemore

(b) County of Residence of First Listed Plaintiff Dallas County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Donal Scott Mackenzie; 9601 White Rock Trail, Suite 205; Dallas, Texas 75238; (214)-269-1439

DEFENDANTS

ETHEX Corporation
CVS Pharmacy, Inc.

County of Residence of First Listed Defendant St. Louis County, MO

NOTE: IN LAND CONFECTION CASES, DISTRICT COURT OF THE
LAND IN VOUCHER

Attorneys (If Known)

Sonnenschein Nath & Rosenthal, LLP; 2000 McKinney Ave., Suite 1900; Dallas, Texas 75201; (214)-259-0900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332; 28 U.S.C. 1441

Brief description of cause:

product liability - pharmaceutical

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

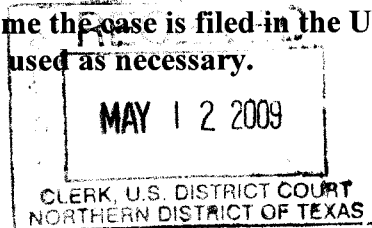
United States District Court
Northern District of Texas

ORIGINAL

Supplemental Civil Cover Sheet For Cases Removed
From State Court

3-09CV0885-D

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.



1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court

Case Number

116TH Judicial District Court of Dallas County Texas

DC-09-04024

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type

Attorney(s)

Liliam McLemore - Plaintiff

Donald Scott McKenzie
Texas Bar No. 24030088
9601 White Rock Trail
Suite 205
Dallas, Texas 75238
(214)-269-1439

Paul H. Cross
Texas Bar No. 05131500
9601 White Rock Trail
Suite 205
Dallas, Texas 75238
(214)-926-5734

Supplemental Civil Cover Sheet
Page 2

ETHEX Corporation - Defendant

C. Michael Moore
State Bar No. 14323600
Sonnenschein Nath & Rosenthal, LLP
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214)-259-0900

Margaret "Peg" Donahue Hall
State Bar No. 05968450
Sonnenschein Nath & Rosenthal, LLP
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214)-259-0900

Christopher W. Reynolds
State Bar No. 24051247
Sonnenschein Nath & Rosenthal, LLP
2000 McKinney Ave., Suite 1900
Dallas, Texas 75201
(214)-259-0900

CVS Pharmacy Inc. - Defendant

John R. Robinson
State Bar No. 17097500
Forman Perry Watkins Krutz Tardy, LLP
2001 Bryan St., Suite 1300
Dallas, Texas 75201
(214)-402-2924

Matthew E. Liebnick
State Bar No. 24013040
Forman Perry Watkins Krutz Tardy, LLP
2001 Bryan St., Suite 1300
Dallas, Texas 75201
(214)-402-2924

3. Jury Demand:

Was a Jury Demand made in State Court? ☐ Yes ☒ No

If "Yes," by which party and on what date?

Party

Date

Supplemental Civil Cover Sheet
Page 3

4. Answer:

Was an Answer made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

ETHEX Corporation
Party

May 1, 2009
Date

CVS Pharmacy Inc.
Party

May 4, 2009
Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

None

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

None

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Claim(s)

Plaintiffs

Negligence
Product Liability